

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

FIRSTBANK PUERTO RICO,

Plaintiff,

v.

SEEMA JUDI NAGLEBERG, as EXECUTRIX
FOR THE ESTATE OF JENS-PETER KEMMLER
a/k/a JENS PETER KEMMLER; and
GOVERNMENT OF THE VIRGIN ISLANDS
BUREAU OF INTERNAL REVENUE,

Defendants.

Civil No. 2008-06

ATTORNEYS:

Raegan M. King, Esq.

St. Thomas, U.S.V.I.

For the plaintiff,

George M. Miller, Esq.

St. Thomas, U.S.V.I.

*For Seema Judi Nagleberg, as Executrix for the Estate of
Jens-Peter Kemmler a/k/a Jens Peter Kemmler,*

George Hedley Phillips, Esq.

St. Thomas, U.S.V.I.

*For the Government of the Virgin Islands Bureau of Internal
Revenue.*

ORDER

GÓMEZ, C.J.

Before the Court is the motion of FirstBank Puerto Rico
("FirstBank") for an award of attorneys' fees and costs.

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On January 14, 2008, FirstBank commenced this debt and foreclosure action against defendants Seema Judi Nagleberg ("Nagleberg"), as Executrix for the Estate of Jens-Peter Kemmler a/k/a Jens Peter Kemmler, and the Government of the Virgin Islands Bureau of Internal Revenue (the "IRB"). On November 3, 2008, FirstBank moved for summary judgment against the defendants. On December 9, 2008, this Court denied FirstBank's motion for summary judgment.

Virgin Islands law provides that "there shall be allowed to *the prevailing party* in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto

. . . ." V.I. CODE ANN. tit. 5, § 541(b) (1986) (emphasis added).

Similarly, Local Rule of Civil Procedure 54.1 provides

Within thirty days after the entry of a final judgment or a judgment allowing costs, *the prevailing party* shall serve on the adverse party and file with the Clerk of the Court a Bill of Costs, together with a notice of motion when application will be made to the Clerk to tax the same.

LRCi 54.1 (Oct. 31, 2008) (emphasis added); *see also* 5 V.I.C. § 543.

Thus, it is clear that an attorneys' fees and costs may only be awarded to the prevailing party in the litigation. Here,

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however, there has been no determination that FirstBank is the prevailing party in this litigation. Accordingly, it is hereby

ORDERED that FirstBank's motion for attorneys' fees and costs is **DENIED** without prejudice.

S_____
CURTIS V. GÓMEZ
Chief Judge